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PATRICK STILLMOCK AND JEANNE STILLMOCK

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

PATRICK AND JEANNE STILLMOCK,  
individually and on behalf of all others  
similarly situated

Plaintiffs,

v.

ROSS STORES, INC.

and

DOES 1 through 10

Defendants.

No. C 07 4809 CRB

**STILLMOCK PLAINTIFFS' STATEMENT**  
**IN RESPONSE TO THE COURT'S**  
**NOVEMBER 30, 2007 ORDER**

Plaintiffs Patrick and Jeanne Stillmock (the "Stillmock Plaintiffs"), by their undersigned attorneys, respectfully submit the following Statement in Response to the Court's November 30, 2007 Order.

The Stillmock Plaintiffs filed their Class Action Complaint alleging violations of FACTA by Defendant Ross in the United States District Court for the District of Maryland on or about May 21, 2007. Ross moved to transfer venue, and on September 10, 2007, upon the Stipulation

1 of the Parties and the Order of the District Court of Maryland, the Stillmock Plaintiffs' action was  
2 transferred to this Court and was subsequently related to *McGee v. Ross*, No. 06-7496 (the  
3 "McGee action"). The McGee action, which contains substantively identical allegations as those  
4 set forth in the Stillmock Plaintiffs' action, had progressed significantly by the time the Stillmock  
5 Plaintiffs' action was transferred. A substantially similar action, *Tolley-McNerney v. Ross*, No.  
6 07-4503 was also transferred to this Court, on or about October 5, 2007.  
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8 On November 21, 2007, the Stillmock Plaintiffs and the Defendants entered into a  
9 Stipulation dismissing the Stillmock Plaintiffs' Complaint pursuant to FED. R. CIV. P. 41.  
10 Because there was no class certified in the Stillmock Plaintiffs' action, the requirements of FED.  
11 R. CIV. P. 23(e) do not apply. The 2003 amendments to the Federal Rules of Civil Procedure  
12 amended Rule 23(e) so that it now provides that "[t]he court must approve any settlement,  
13 voluntary dismissal or compromise of the claims, issues, or defenses of a *certified* class." FED. R.  
14 CIV. P. 23(e) (emphasis added). *See also Buller v. Owner Operator Indep. Driver Risk Retention*  
15 *Group, Inc.*, 461 F. Supp. 2d 757, 764 (S.D. Ill. 2006) ("As the leading treatise on federal  
16 procedure observes, '[T]he 2003 amendments make clear that Rule 23(e) only applies to the  
17 'claims, issues, or defenses of a certified class.' Thus, settlements or voluntary dismissals that  
18 occur before class certification are outside the scope of subdivision (e).'" (quoting 7B Charles  
19 Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 1797 (1998 &  
20 Supp. 2006) (footnote omitted).  
21  
22

23 Thus, there is no impediment to the entry of the Stillmock Plaintiffs' and Defendants'  
24 Stipulation of Dismissal. Because the Stillmock Plaintiffs anticipate the imminent dismissal of  
25 their action, they do not take any position with respect to the consolidation of the remaining  
26 FACTA actions against Ross.  
27  
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1 DATED: December 10, 2007

Respectfully submitted,

3 SCHIFFRIN BARROWAY  
4 TOPAZ & KESSLER, LLP

5 By: /s/  
6 KATHERINE B. BORNSTEIN  
7 Attorneys for Plaintiffs  
8 PATRICK STILLMOCK AND  
9 JEANNE STILLMOCK  
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